

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

GARY W. BAILEY, )  
                        )  
Plaintiff,         )  
                        )  
                        ) No. 3:09-CV-548  
                        ) (PHILLIPS/SHIRLEY)  
V.                    )  
                        )  
CSX TRANSPORTATION INC., )  
                        )  
Defendant.         )

**MEMORANDUM AND ORDER**

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and the order of the District Judge [Doc. 16] referring Plaintiff's Motion to Compel and Incorporated Brief of Law [Doc. 15] to this Court for disposition. The Defendant has responded in opposition to the Plaintiff's motion [Doc. 17], and the Plaintiff has made a final reply in support of his position [Doc. 18]. The Court finds that the Motion to Compel is ripe for adjudication.

The parties appeared before the Court on August 15, 2011, to address whether the Defendant must produce or identify any memoranda, photographs, videotapes, or other recordings of surveillance of the Plaintiff performed by or on behalf of the Defendant. Attorney Andrew Lampros was present representing the Plaintiff, and Attorney Jay Baker was present representing the Defendant.

In the Motion to Compel, the Plaintiff maintains that the Defendant should be required to produce any surveillance materials in response to the Plaintiff's requests for production. The Plaintiff argues that the surveillance materials are not protected by the work-product doctrine and surveillance materials are routinely discoverable following the deposition of a plaintiff, which in this

case has been completed. The Defendant responds that the Plaintiff's argument hinges on the assumption that the surveillance material will be used at trial, but the Defendant will not use any surveillance material at trial.

The Court has heard the parties' positions during the telephone conference and considered the parties' filings, and the Court finds that the Motion to Compel is not well-taken. Counsel for the Defendant has unequivocally confirmed that the Defendant will not use surveillance materials at the trial of this matter. Accordingly, the Court **ORDERS** that the Defendant is prohibited from using any surveillance materials, directly or indirectly, for any purpose or in any form, at the trial of this matter. Because the Defendant will not use these materials at trial, the Plaintiff's Motion to Compel is **DENIED**.

**IT IS SO ORDERED.**

ENTER:

s/ C. Clifford Shirley, Jr.  
United States Magistrate Judge